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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on the
Commission's Natural Gas and Electric Safety
Citation Programs.

Rulemaking 14-05-013
(Filed May 15, 2014)

**OPENING COMMENTS OF PACIFIC GAS AND ELECTRIC
COMPANY (U39M) TO PHASE TWO PROPOSED DECISION
ADOPTING NECESSARY IMPROVEMENTS AND
REFINEMENTS TO THE GAS AND ELECTRIC SAFETY
CITATION PROGRAMS**

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I. INTRODUCTION

Pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure, Pacific Gas and Electric Company (PG&E) respectfully submits these Opening Comments on the Phase Two Proposed Decision (PD) Adopting Necessary Improvements and Refinements to the Gas and Electric Safety Citation Programs.

PG&E appreciates the PD's efforts in merging the citation programs into a single set of rules applicable to both gas and electric corporations so that the programs can be similar in structure and process.¹ The PD would allow thirty days to self-report potential violations and to respond to both gas and electric citations, which will provide utilities the necessary time to investigate and develop appropriate corrective actions and, is an improvement over the current ten-day requirement for gas under Resolution ALJ-274.² Similarly, the PD provides for appropriate flexibility with respect to notifying local authorities of a self-reported potential violation, by delegating the authority to Staff to determine whether such notifications are needed.³ In addition, the PD recognizes that a voluntary self-reporting approach is consistent with both the specific language of Senate Bill 291, as codified in Section 1702.5 of the Public

¹ PD, p. 4

² PD, pp. 57, 69.

³ PD, p. 60.

Utilities Code⁴, and the practices of several other regulatory agencies to encourage utilities to proactively identify, correct, and report potential violations to improve overall safety and compliance.⁵ These improvements are all positive steps towards enhancing public and employee safety.

The PD, however, falls short of its goal to foster a safety culture that promotes transparency and collaboration on two key issues.

First, the PD's conclusions regarding Staff discretion in determining penalty amounts are steps backwards towards a punitive approach and effectively result in unfettered discretion for Staff to impose citations without any limits on monetary penalties. The PD errs by requiring Staff to impose penalties at the maximum amount set out in Section 2107 of \$50,000 for each violation⁶ and allowing an \$8 million administrative limit for each citation with additional discretion for Staff to separate violations into distinct citations regardless of whether the violations occurred in the same incident or are similar in nature.⁷ In addition, the \$8 million administrative limit for each citation is arbitrary and not supported by the record. PG&E proposes modifications below and respectfully requests the Commission to reexamine the administrative limit and align the amount of fines that Staff can impose with the goals of this proceeding.

Second, the PD incorrectly assumes without any factual basis that the proposed electric self-reporting Criterion 2 is clear and will not result in PG&E's anticipated volumes.⁸ PG&E comments below on the PD's erroneous factual assumptions and proposes revisions to reduce the ambiguity and add a significance threshold to electric self-reporting Criterion 2.

⁴ All statutory references are to the California Public Utilities Code unless otherwise provided.

⁵ PD, p. 46.

⁶ PD, p. 23.

⁷ PD, pp. 28-29.

⁸ PD, p. 55.

II. DISCUSSION

A. Modifications To The PD's Administrative Limit Are Necessary To Avoid A Punitive Approach That Does Not Further Improve Safety

PG&E shares the Commission's commitment to continuously improve public safety. As PG&E explained in our comments at the outset of this proceeding, we want to forge an overarching approach to safety that will best integrate the Commission's regulatory efforts and utilities' changing and complex operating environment.⁹ The Phase I Decision ordered this proceeding to remain open for Phase II with the goal of making improvements and refinements to the gas and electric safety citation programs.¹⁰ The Amended Scoping Memo described that properly implemented citation programs will encourage utilities to proactively identify and correct violations to avoid penalties, and to self-identify potential violations.¹¹ The PD itself recognizes the value of encouraging the right behavior, consistent with the practices of several other regulatory agencies.¹² Yet, the PD's unfettered discretion for Staff to issue multiple citations for the same incident combined with an \$8 million administrative limit result in a punitive approach that is inconsistent with the goal of encouraging utilities to proactively and openly self-report potential violations.

The PD reasons that the \$8 million administrative limit was an exercise of discretion with the goal to ensure that "utilities do not have incentives to make economic choices that cause or unduly risk violations."¹³ The PD asserts that this limit is needed to avoid having penalties be factored into "the utility business model as a mere cost of doing business."¹⁴ Not only is this rationale flawed, as discussed below¹⁵, but incorrectly focuses on goals that do not encourage proactive transparency and collaboration between utilities and regulators to further improve safety.

⁹ See PG&E's Opening Comments filed June 20, 2014, p. 1.

¹⁰ D.14-12-001, pp. 1, 17, 45.

¹¹ Assigned Commissioner's Amended Scoping Memo and Ruling For Phase II, June 15, 2016, p. 6.

¹² See PD, p. 46.

¹³ PD, pp. 28-29.

¹⁴ PD, p. 31.

¹⁵ See discussion at p. 6, *infra*.

1. Staff Discretion To Split Violations Into Multiple Citations And Impose the Maximum Statutory Penalty For Each Violation Circumvents The Administrative Limit

Without further guidance and limitations, Staff in effect has the ability to subjectively, inconsistently, and arbitrarily impose multiple citations, each with a penalty amount up to \$8 million, for a single incident. The PD gives Staff the discretion to either include multiple violations in a single citation or address each violation in a distinct citation regardless of whether the violations occurred in the same incident or are of similar nature.¹⁶ The PD provides no guidance to Staff as to when an incident should involve a single citation or when to separate violations occurring in the same incident into multiple citations (in other words, “citation splitting”).

In the recent Decision 16-08-020 in Investigation 14-11-008¹⁷ (“PG&E Gas Distribution Records OII”), the Commission addressed an incident where gas service was interrupted to 987 customers.¹⁸ The Commission determined that “each service interruption constitutes a separate violation.”¹⁹ With the PD’s approval of “citation splitting,” Staff in that case or a similar case would have the discretion to issue one citation or split the violations up to 987 separate citations. In addition, the PD requires Staff to assess the statutory maximum of \$50,000 under Section 2107, even though the Commission determined that \$2,000 per violation was appropriate in this instance in the PG&E Gas Distribution Records OII. As a result, if Staff decided, as in the PG&E Gas Distribution Records OII, to treat all 987 customer interruptions as 987 separate violations, and to issue separate citations of \$50,000, the penalties for the single event would be over \$49 million, well beyond the \$8 million administrative limit.

¹⁶ PD, pp. 28-29.

¹⁷ Order Institution Investigation and Order to Show Cause on the Commission’s Own Motion into the Operations and Practices of Pacific Gas and Electric Company with respect to Facilities Records for its Natural Gas Distribution System Pipelines

¹⁸ Investigation 14-11-008 was opened in response to six incidents and also included issues related to systemic violations. PG&E focuses its example on the one incident in Milpitas on October 10, 2012 (Milpitas 1) where PG&E unexpectedly lost gas service to 987 customers during replacement of a gas distribution main. See D.16-08-020, p. 3 for more description on the Milpitas 1 incident.

¹⁹ D.16-08-020, p. 50.

Applying the PD's framework to this example, not only illustrates Staff's broad discretion to impose virtually unlimited penalty amounts, but also demonstrates the impracticality of the PD's insistence on requiring Staff to impose the statutory maximum fine for each violation coupled with an administrative limit of \$8 million that may be compounded, potentially on a daily basis, by citation splitting. Specific to the one incident of 987 gas service interruptions in the PG&E Gas Distribution Records OII, the per violation amount for each gas service interruption was assessed at the lower end of the statutory range; the Commission determined a fine of \$2,000 per violation was reasonable since there were no injuries or economic losses.²⁰ Under the PD, however, Staff would be *required* to impose the statutory maximum of \$50,000 for each violation rendering a penalty far in excess of what the Commission would impose for this specific incident in an OII.²¹

This example demonstrates the problem with the citation parameters included in the PD. The purpose of the citation programs was to delegate authority to Staff to quickly address safety violations without resorting to formal procedures, such as an OII.²² It does not follow that the citation programs would delegate Staff authority to impose penalties for a single incident that far exceed what the Commission would adopt in an OII. To avoid such results, the PD should clarify that the administrative limit applies to a related series of violations that occurred in the same incident or are of a similar nature. Moreover, rather than adopt minimum requirements for fines, the citation programs should allow Staff to adopt fines commensurate with the violations.

2. The PD Arbitrarily Adopts An \$8 Million Administrative Limit that Is Without Any Factual Basis and Unsupported By The Record

The PD seeks to justify the \$8 million administrative limit as reasonable in light of the revenue requirements of the major utilities to ensure that utilities do not make economic choices

²⁰ *Id.*

²¹ This illogical result is not merely hypothetical since the PD determined that Staff is not limited to issuing citations for only certain categories, such as violations with an immediate safety impact. See PD, pp. 16-17.

²² See D.14-12-001, pp. 6-7.

and unduly risk violations by factoring penalties as a mere cost of doing business.²³ Although the PD recites the number of customers and authorized revenue requirements from the general rate cases of Southern California Edison, Southern California Gas Company, San Diego Gas and Electric, and PG&E, the size of the utilities' revenue requirements does not support the concern that a utility would take a safety risk as a cost of doing business; in fact, penalties are borne by shareholders, not ratepayers.²⁴

The PD quotes the Joint Parties' comments recommending an administrative limit that allows the Commission to meet its safety objectives while enabling utilities to manage their risk as confirmation that utilities would factor in penalties as a cost of doing business.²⁵ However, the PD incorrectly overlooks utility ratemaking principles that already deter such treatment of costs and penalties,²⁶ as explained by the Joint Parties comments:

In addition, because preventive maintenance and safety improvements are recoverable in rates, while penalties are not, there is no incentive for a utility to pay a penalty in lieu of spending money on safety upgrades. Thus, every penalty, no matter the amount, serves as a powerful disincentive to violate safety requirements.²⁷

The PD's rationale for the administrative limit is incorrect and inconsistent with the record. There is no factual basis in the record for the PD to set the arbitrary amount of \$8 million as the administrative limit.

²³ See PD, pp. 29-31.

²⁴ See PD, p. 73; p. 86, Conclusions of Law 34; p. 87, Ordering Paragraph 5.

²⁵ PD, p. 31.

²⁶ The PD clearly recognizes these principles, as stated in PD, p. 73, Conclusions of Law 34, and Ordering Paragraph 5, but fails to recognize it as it relates to its rationale for the administrative limit.

²⁷ Joint Parties' Comments filed November 2, 2015, p. 9.

3. The PD Should Be Revised To Allow Staff Discretion In Determining Penalty Amounts Within The Range of Section 2107 And Clarify That The Administrative Limit Applies To A Related Series Of Violations

Portions of the PD requiring Staff to determine the penalty for each violation at the Section 2107 maximum should be modified to allow Staff the discretion to assess penalties on less than a daily basis and within the \$500 - \$50,000 statutory range of Section 2107. Allowing Staff the discretion to assess penalties within the range would provide consistency with other portions of the PD instructing Staff to weigh the adopted criteria when determining penalty amounts.²⁸ The PD asserts, as Staff issues more citations, there will be body of precedent to draw context and compare results.²⁹ However, the modification will allow Staff to align with existing precedent of assessing fines within the statutory range of Section 2107.³⁰ At minimum, the PD should clarify that the \$8 million administrative limit applies to a related series of violations and Staff cannot split violations that occurred in the same incident or are of a similar nature into different citations.

PG&E also urges the Commission to revise the \$8 million administrative limit and align the amount with the record and approaches of other regulatory agencies. PG&E recognizes that as a matter of policy the Commission rejects the administrative limit range of \$200,000 - \$500,000 previously suggested by utilities.³¹ However, the record consists of administrative limits of regulatory agencies that the Commission should consider, such as the Pipeline and Hazardous Materials Safety Administration and the Office of State Fire Marshal.

²⁸ See PD, pp. 14-15; pp. 23-24; p. 75 Findings of Fact 3; p. 79 Conclusions of Law 3; p. 80 Conclusions of Law 7.

²⁹ PD, p. 24; p. 75 Findings of Fact 6.

³⁰ Decision 16-09-009 in PG&E Application for Approval of a Power Purchase Agreement with Mariposa Energy, LLC. (A.09-04-001) provides a recent example of Commission discretion in weighing factors and determining penalties under the statutory maximum of Section 2107; PG&E was fined a total of \$25,000 for two violations of a term of a settlement agreement (\$12,500 per violation).

³¹ PD, p. 29. PG&E does not propose a specific amount in its Specific Recommended Changes in Attachment A or Attachment B because PG&E recognizes that there is not a specific amount that is legally required; the amount of the administrative limit is a policy matter for the Commission but it must have a solid nexus to the record and not arbitrary.

PG&E strongly encourages the Commission to continue its progress towards the goals of this proceeding and avoid adopting such a punitive approach.

B. The PD Should Be Revised To Provide Further Clarity And Add A Significance Threshold To Electric Self-Reporting Criterion #2

The PD adopts self-reporting Criterion 2 for the electric safety citation program as follows:

A potential violation that caused system wide impacts to the electric grid; caused unplanned power outages of over one hour to over five percent of an electrical corporation's customers or unplanned power outages of over 24 hours to over 100 electrical corporations; or caused the electrical corporation to activate its emergency response program.³²

In response to PG&E's concerns that the criterion is overly broad and would require PG&E to self-report out of an abundance of caution, the PD, without any factual support, explains that it does not anticipate the volume of self-reports as PG&E suggests because what is reported is a potential violation, not all outages whether or not they are potential violations.³³

PG&E will not repeat its arguments, but reiterates its concerns with the proposed Criterion 2 as overly broad and lacking a significance threshold. PG&E proposes the following modifications:

A potential violation that caused system wide impacts to the electric grid; caused unplanned power outages of over ~~one 96 hours to over five percent of an electrical corporation's customers or unplanned power outages of over 24 hours~~ to over 1,000 electrical corporations; or caused the electrical corporation to activate its severe and catastrophic emergency response program.

The revisions above will provide further clarity and specificity on the type of unplanned outages and emergency response program that would rise to a significance threshold and allow PG&E to target its self-reporting so as to not inundate the Safety and Enforcement Division.

³² PD, pp. 55-56.

³³ Compare PG&E Reply Comments, filed August 5, 2016, pp. 2-4; PD, p. 55.

III. CONCLUSION

For the reasons stated above, PG&E respectfully requests that the Commission revise the PD in the manner described above and shown in the attached redlines, Attachment A, Specific Recommended Changes to the Proposed Decision, and Attachment B, Specific Recommended Changes to Appendix A of the Proposed Decision, Citation Procedures and Appeal Process.

Respectfully Submitted,

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ATTACHMENT A:

SPECIFIC RECOMMENDED CHANGES TO THE PROPOSED DECISION

PD, Page 23.

Revise paragraph as follows:

~~We retain the structure of the citation program in Resolution ALJ-274 (gas) and D.14-12-001 (electric) that~~ Staff shall determine the penalty for each violation at in accordance with the § 2107 maximum range of \$500 – \$50,000, with discretion to assess penalties on less than a daily basis ~~(again at the statutory maximum)~~. We require Staff to weigh the criteria set forth in § 6 above in determining the penalty amounts consistent with the above framework.

PD, Page 29.

Revise the paragraph as follows:

We adopt an administrative limit of no more than \$8 ~~X~~ million for each citation issued under the gas and electric safety citation programs. We arrive at this figure in exercising our discretion with the goal of establishing a robust citation program which ensures that utilities do not have incentives to make economic choices that cause or unduly risk violations, while providing that the most egregious violations should be presented to the Commission in an OII. The Staff ~~has the discretion to either address each violation in a distinct citation or to include multiple violations in a single citation regardless of whether the violations shall address violations that occurred in the same incident or are of a similar nature~~ in one citation. If necessary, we can reexamine this limit once the Commission gains experience with it.

PD, Page 31.

Revise the paragraph as follows:

According to the Joint Parties, an “administrative schedule with pre-determined penalty ranges based on the severity of the offense, coupled with a pre-determined administrative limit, allows the Commission to meet its safety objectives while enabling utilities doing business in California to manage their risk.” ~~However, We do not want potential citation penalties to be factored into the utility business model as a mere cost of doing business. (See D.02-10-059 at 55; OII concerning Quest Communications.)~~ The law is clear that utilities must not use ratepayer funds to pay penalties. Given the above revenue requirements of the major gas and electric utilities, the administrative limit we set today is reasonable and achieves the goal of being sufficient enough to ensure that utilities do not have incentives to make economic choices that cause or unduly risk violations which may lead to a citation. We may also initiate an OII for more egregious violations. We understand that there are smaller energy utilities as well; however, under our citation programs, SED has the discretion on whether to issue a citation in the first instance and whether to fine for multiple days, by considering various criteria, including the size of the utility. Thus, the safety citation programs contain appropriate flexibility for SED in issuing citations.

PD, Page 55.

Revise the paragraph as follows:

Our adopted Criterion 2 for the electric safety citation program is therefore as follows: A potential violation that caused system wide impacts to the electric grid; caused unplanned power outages of over ~~one 96~~ 96 hours to over ~~five percent of an electrical corporation’s customers or~~

~~unplanned power outages of over 24 hours to over 1,000 electrical corporation customers; or caused the electrical corporation to activate its severe and catastrophic emergency response program.~~

PD, Page 76.

Revise Finding of Fact No. 11 as follows:

11. We determine the administrative limit of no more than \$8 X million for each citation issued, for a series of violations that occurred in the same incident or are of a similar nature, under the gas and electric safety citation programs in exercising our discretion with the goal of establishing a robust citation program which ensures that utilities do not have incentives to make economic choices that cause or unduly risk violations, while providing that the most egregious violations should be presented to the Commission in an OII. The Staff ~~has the discretion to either address each violation in a distinct citation or to include multiple violations in a single citation regardless of whether the violations shall address violations that~~ occurred in the same incident or are of a similar nature in one citation. If necessary, we can reexamine this limit once the Commission gains experience with it.

PD, Page 76.

Revise Finding of Fact No. 13 as follows:

~~13. Given the large revenue requirements of the major energy and gas utilities, the administrative limit we set today is reasonable and achieves the goal of being sufficient enough to ensure that utilities do not have incentives to make economic choices that cause or unduly risk violations which may lead to a citation. We may also initiate an OII for more egregious violations.~~

PD, Page 80.

Revise Conclusions of Law No. 7 as follows:

~~7. The structure of the citation program in Resolution ALJ-274 (gas) and D.14-12-001 (electric) should be maintained in that~~ Staff shall determine penalty for each violation at in accordance with the § 2107 maximum range of \$500 – \$50,000, with discretion to assess penalties on less than a daily basis ~~(again at the statutory maximum)~~. We require Staff to weigh the criteria set forth in §§ 6 and 7 of today's decision and in Rules I.A and I.B (Appendix A) in determining the penalty amounts consistent with the above framework.

PD, Page 80.

Revise Conclusions of Law No. 8 as follows:

8. An administrative limit of no more than \$8 X million for each citation issued, for a series of violations that occurred in the same incident or are of a similar nature, under the gas and electric safety citation programs should be adopted. The Staff ~~has the discretion to either address each violation in a distinct citation or to include multiple violations in a single citation regardless of whether the violations shall address violations that~~ occurred in the same incident or are of a similar nature in one citation.

PD, Page 80-81.

Revise Conclusions of Law No. 15 as follows:

15. It is reasonable to adopt the following criteria for utility reporting of self-identified potential violations for the electric safety citation program: (a) a potential violation that poses a significant safety threat to the public and/or utility staff, contractors, or subcontractors; (b) a potential violation that caused system wide impacts to the electric grid; caused unplanned power outages of over ~~one 96~~ hours to over ~~five percent of an electrical corporation's customers or unplanned power outages of over 24 hours to over 1,000~~ electrical corporation customers; or caused the electrical corporation to activate its severe and catastrophic emergency response program; and (c) any instances of fraud, sabotage, falsification of records and/or any other instances of deception by an electrical corporation's personnel, contractors, or subcontractors, that caused or could have caused a potential violation, regardless of the outcome.

(END OF ATTACHMENT A)

ATTACHMENT B:

SPECIFIC RECOMMENDED CHANGES TO APPENDIX A OF THE PROPOSED DECISION – CITATION PROCEDURES AND APPEAL PROCESS

Appendix A, Page 3.

Revise Section I. A. 4 as follows:

4. Staff shall determine penalty for each violation ~~at the statutory maximum~~ as defined by Public Utilities Code § 2107. Staff has the discretion to assess penalties on less than a daily basis ~~(again at the § 2107 statutory maximum.)~~ Staff shall weigh the criteria set forth in Rule I.A.3 above in determining the penalty amounts consistent with this framework.

Appendix A, Page 3.

Revise Section I. A. 5 as follows:

5. The administrative limit for each citation issued, for a series of violations that occurred in the same incident or are of a similar nature, pursuant to this citation program is \$8 ~~X~~ million. The Staff ~~has the discretion to either address each violation in a distinct citation or to include multiple violations in a single citation regardless of whether the violations shall address violations that occurred in the same incident or are of a similar nature~~ in one citation.

Appendix A, Page 9.

Revise Section I. G. 3 (c) as follows:

c. Voluntarily reportable self-identified potential violation criteria for electric: (i.) a potential violation that poses a significant safety threat to the public and/or utility staff, contractors, or subcontractors; (ii.) a potential violation that caused system wide impacts to the electric grid; caused unplanned power outages of over ~~one 96 hours~~ to over ~~five percent of an electrical corporation's customers or unplanned power outages of over 24 hours to over 1,000~~ electrical corporation customers; or caused the electrical corporation to activate its severe and catastrophic emergency response program; or (iii.) any instances of fraud, sabotage, falsification of records and/or any other instances of deception by an electrical corporation's personnel, contractors, or subcontractors, that caused or could have caused a potential violation, regardless of the outcome.

(END OF ATTACHMENT B)